

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
BRYSON CITY DIVISION**

CIVIL CASE NO. 2:09cv22

CONSUELO ALVAREZ COSBY,

Plaintiff,

vs.

LOWE'S COMPANIES, INC.,

Defendant.

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ORDER

THIS MATTER is before the Court on the Defendant's Motion for Judgment on the Pleadings [Doc. 11], filed on August 6, 2009, and the Magistrate Judge's Memorandum and Recommendation [Doc. 20], entered on November 2, 2009.

Pursuant to 28 U.S.C. § 636(b) and the standing Orders of Designation of this Court, the Honorable Dennis L. Howell, United States Magistrate Judge, was designated to consider the Defendant's Motion for Judgment on the Pleadings [Doc. 11].

On November 2, 2009, the Magistrate Judge entered a Memorandum and Recommendation [Doc. 20] recommending that the Defendant's Motion for Judgment on the Pleadings [Doc. 11] be allowed, that the

Plaintiff's claim, which is preempted by ERISA, be deemed a claim under ERISA, and that such ERISA claim be dismissed without prejudice. The Magistrate Judge further recommended that the remaining claims in the Complaint for punitive damages as well as a jury trial be dismissed with prejudice as such are barred as a matter of federal law. [Doc. 20].

The parties were advised that any objections to the Magistrate Judge's Memorandum and Recommendation were to be filed in writing within ten days of service of the same. The period within which to file objections has expired, and no written objections to the Memorandum and Recommendation have been filed.

After a careful review of the Magistrate Judge's Memorandum and Recommendation, the Court finds that the proposed findings of fact are supported by the record and that the proposed conclusions of law are consistent with current case law. Accordingly, the Court hereby accepts the Magistrate Judge's Recommendation [Doc. 20] that the Defendant's Motion for Judgment on the Pleadings [Doc. 11] be allowed; that the Plaintiff's claim, which is preempted by ERISA, be deemed a claim under ERISA, and that such ERISA claim be dismissed without prejudice; and

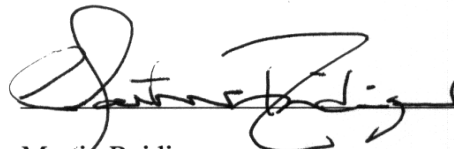
that the Plaintiff's demand for an award of punitive damages and for a jury trial be dismissed with prejudice.

Accordingly, **IT IS, THEREFORE, ORDERED** that the Defendant's Motion for Judgment on the Pleadings [Doc. 11] is **ALLOWED**, and the Plaintiff's claim, which is preempted by ERISA, is deemed a claim under ERISA and is **DISMISSED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that the Plaintiff's demands as stated in the Complaint for an award of punitive damages and for a jury trial are **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.

Signed: November 30, 2009


Martin Reidinger
United States District Judge

